

**House Transportation and Infrastructure
Committee**

Railroads Subcommittee

Testimony of
United Transportation Union

James Stem

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Chairman LaTourette, Ranking Member Ms. Brown, and Members of the Committee: On behalf of the men and women that are operating the trains moving on our nation's railroads today, I want to thank you for giving us the opportunity to testify on our priorities for rail safety.

My name is James Stem and I serve in the position of Alternate National Legislative Director with the United Transportation Union (UTU). I devote more than a majority of my time every day working on rail safety issues. I also have the assignment of coordinating our participation with the Federal Railroad Administration (FRA) Rail Safety Advisory Committee (RSAC) at the direction of UTU International President Paul Thompson.

Today I am going to focus my remarks on training and the significant effect that inadequate training has on safety. I am also going to discuss the effects of acute and cumulative fatigue on situational awareness of safety critical employees. Also in our testimony today, we will discuss the responsibility of both employees and railroad supervisors to comply with Federal law, Federal regulations and operating rules dealing with safety issues.

I want to make the following major points in my testimony:

- (1) Training of new employees working in safety sensitive positions is inadequate and not focused on safe operations. New employees should not be allowed to work unsupervised until they accumulate at least one years experience.
- (2) Fatigue of safety sensitive employees is not addressed in any rail operational safety plan. We are asking Congress to take appropriate action to amend the Hours of Service Act to resolve this issue:
 - To restrict each tour of duty to 10 Hours and no more.
 - To also establish a cumulative total for covered service each 7 days
- (3) Federal Laws and Federal Regulations apply to all railroad employees, including railroad supervisors.

We are pleased to report to you that UTU is the FRA partner working together to improve safety in our rail industry. We appreciate the positive relationship Administrator Joe Boardman, Associate Administrator of Safety Jo Strang and their staff have developed with labor and management. We believe that FRA is on the right track and fully comprehends the complex safety issues confronting our industry today.

We also have a strong opinion that Congressional intervention is now warranted to give FRA more resources and more authority to have a more immediate impact on the increasing numbers of train collisions and major accidents that continue to occur.

Accidents caused by human factors account for about 38% of total train accidents; this category of accidents is increasing. Inadequate training programs for new employees, their lack of practical on-the-job experience, an absence of familiarity with the workplace physical environment, substandard recurrent training requirements for existing employees, and the unacceptable prevalence of fatigue throughout the rail industry are the causes of these accidents.

The insufficiency of existing training programs together with fatigue and the resulting loss of situational awareness are contributing causes in the majority of accidents attributed to human factor failures. Cumulative fatigue is the major contributing factor in the loss of situational awareness; however, training deficiencies and other demands on the employee's time disrupt the ability to focus, prioritize, and process the critical information streams that require constant attention.

Training

We believe it is appropriate that we express our enthusiasm to the Committee this morning for the process that Administrator Boardman and FRA have established to address training issues. A Working Group consisting of representatives from Brotherhood of Locomotive Engineers and Trainmen (BLET), UTU, FRA, the railroads, and recognized training experts has been formed and will meet, for the first time, later today. We are very optimistic that this proactive working group can move quickly to find and implement solutions that will have an immediate positive effect on the training and qualifications of operating crew members. We salute both FRA and American Association of Railroads (AAR) for their willingness to contribute their resources in this effort to make training in the rail industry a safety advantage instead of the most significant safety issue.

The rail industry will have more than 80,000 new employees in the next five years. The rail industry is also experiencing an unprecedented retention problem involving new employees. Based on reports from the field, new employees are resigning and leaving the industry because they are dissatisfied with the quality of their training, they are uncertain of their skills and understanding of the work processes, and they are understandably

uncomfortable with their level of responsibility. Exit interviews conducted with former new employees indicate that their training did not prepare them for service in what they believe is a dangerous work environment, and they did not receive the opportunity to become accustomed to the realities of working a self supervised position with irregular shift scheduling and uncertain rest day opportunities.

The lack of appropriate training is the number one safety issue facing the rail industry today – and training failures should be of significant and urgent concern to the Congress. These training deficiencies are not limited to operating employees, but also include train dispatchers, signal employees, maintenance of way employees, locomotive repair and servicing employees, and track inspectors.

It is obvious to us this trend towards declining rail safety, increased train collisions, and human factor accidents has a direct relationship with the failure of training programs and the rampant fatigue problems throughout the industry.

Training experts advise that appropriate and focused initial training instills discipline, an understanding of the job responsibilities including the limitations on the employee's decisions, and the role of the employee in the overall operation. It is training rather than intelligence that produces the proper and safe reaction to different circumstances, especially, in cases when something unusual occurs.

Well trained employees understands their roles and limitations, while an employee that knows he lacks the knowledge and skills to safely perform his or her duties will perform unsafe acts more frequently out of fear of being sanctioned by his employer for being unqualified. A well trained employee knows when to stop and ask questions. Experience and familiarity with the physical characteristics of the work place instills confidence. New employees should receive the opportunity to gain experience, become familiar, and develop competency. They should not be expected to work unsupervised and perform their duties under the assumption that they will react to work place situations as if they were seasoned veterans.

Neither of the two crew members on the train involved in the accident at Graniteville, S.C. in January 2005 had received training on hazardous material emergency response from the railroad involved. The young engineer ran out of the chlorine cloud (after the derailment and breach of the tank car). He was overcome by the gas and died. The conductor,

on the other hand, a bit older and with Army chemical training, walked slowly and deliberately out of the cloud and survived.

Training in every industry except the railroad is delivered in incremental segments. With incremental training, an employee receives basic levels of knowledge and learns the approved techniques and procedures that must be followed to insure that each task is performed safely and correctly. This segment involves a traditional classroom setting. The employees then receive an opportunity to practice and perfect what they have studied in a classroom working on-the-job in a directly supervised environment in the work place. This hands-on experience prepares the employee for the next level of class room training, which again will be followed by intervals of supervised on-the-job experience gathering.

The railroads training philosophy has evolved into a "single injection" process where a new recruit is given a single dose of training, in lieu of incremental training. This one shot approach to training attempts to transform inexperienced individuals into proficient Conductors and/or Remote Control Operators before the employee earns a day's pay working as a trainman or yardman on a train crew. There may be a few unusually adept people who will manage to survive their entry to this industry without contributing to an accident or injury, but the overwhelming majority of new employees require much remedial training and exposure to the hazards of railroading before they are capable of applying their classroom lessons to actual situations in the work place.

The UTU is of the strong opinion that newly hired trainmen should not be required to work unsupervised or operate locomotives until they are truly experienced in the trainman craft. This ensures they have become proficient in their train service job functions and have gained needed on-the-job experience before assuming additional demanding duties and responsibilities.

A one year minimum in train service prior to becoming a conductor would improve the quality and competency of railroad operating employees, which equates to safer and more efficient operations.

It also ensures that newly hired employees will have approximately two years of practical railroad experience before they can be expected to operate locomotives without direct supervision.

Unless we can quickly eliminate training as the major safety issue, we can only expect this negative trend in safety to accelerate.

Fatigue

Everyone involved with Rail Safety understands the inescapable truth that cumulative fatigue has significant adverse safety consequences for safety sensitive positions. Unfortunately, FRA is not empowered to deal with anything beyond Acute Fatigue. The railroads have refused to address the problem in a meaningful manner and many employees are now told "Either come to work or you are fired" when they have not been able to sleep before reporting for duty.

The railroad companies are operating at, or attempting to exceed, maximum capacity and today they are booking record profits. However, the absence of sufficient manpower and the continuing reliance on an understaffed, overworked, and often fatigued work force has created a ticking time-bomb.

The NTSB has for more than a decade identified fatigue as the most serious safety concerns affecting the railroad industry. Fatigue has remained near the top of the Board's listing of the "most wanted" safety issues that need to be addressed. The NTSB notes that safety sensitive rail employees can be required to work in excess of 400 hours in a 30 day period, compared with about 250 hours for operators of highway vehicles.¹

Unless a human being knows well in advance what time they must report to work, they can not arrange to be rested and fit for duty. The railroad industry functions on a 24/7 schedule with continuous operations from coast to coast. This is not an excuse for the current position of the railroads, holding that their employees do not require advance knowledge of the time they must appear for their next assignment in order to manage their lives and obtain sufficient sleep before reporting for work. Every railroad terminal has an information delivery system commonly referred to as a "lineup" that is used to advise crews who are subject to call 24/7 regarding their status. Every railroad has "problems" with the accuracy of these "lineups". To insure the safe operation of trains, it is absolutely essential that the employees have early and reliable information indicating the date and time when they will be required to report for duty.

The incidence of fatigue for railroad operating crews and its significant detrimental effect on situational awareness for safety sensitive employees

¹ Safety Report NTSB/SR-99/01, Figure 1-1. Maximum work hours in a 30-day period.

covered by the Hours of Service, is directly associated with the so called "limbo time" ruling.

"Limbo time" is nomenclature created when the judicial system interpreted the hours of service statute to permit operating crews to work their entire 12 hour tour of duty moving trains. All time consumed between completion of the maximum allowable twelve hour shift and the time when an employee is completely released from service is classified as time awaiting deadhead transportation or "limbo time". The railroads have now subverted this court decision and regularly compel crews to remain at the work place to guard the stationary trains until a relief crew is available for service. The crews are eventually transported from the train and relieved from service at the convenience of the railroad.

The railroads do not dispute the fact that management is responsible for the prevalence of "limbo time" by forcing crews to remain on duty in a "Relieved but Not Released" status for hours and hours after completing a 12 hour shift.

Reports indicate that the number of employees who are obligated to remain at the work place for lengthy periods of time following the expiration of 12 hours on duty is large and the situation occurs many times each day. The expenditure of 18 consecutive hours between the time when an employee reports for duty and the time when this individual is finally released from service is not unusual. In such circumstances, crews are then only entitled to be off duty 10 hours before they can be required to report for another 18 to 20 hour shift.

The only human beings that do not accept the horrendous safety consequences of this Limbo Time fiasco are the railroad executives that stand to make a tremendous amount of personal bonus income by perpetuating an unsafe practice that exploits their coworkers. Their bonuses are based, in part, on keeping head counts down and train velocity up.

Limbo time increases the prevalence of fatigue, at the expense of safety, as evidenced by the increasing number of train collisions and major accidents allegedly caused by human error.

Before this limbo time fiasco became reality, the railroads relieved their crews in a timely manner with very rare exceptions, and their operations were not gridlocked as a result. Their crew management system operated much more efficiently and they did not have a high percentage of their crews sitting on idle trains because management was

forced to organize and dispatch relief crews in time to prevent hours of service violations.

Immediate Congressional intervention is warranted to correct the Limbo time fiasco and the occurrence of fatigue caused by the practice. In the railroad industry today, 12 hours on duty normally means 12 hours working on the train and then several additional hours while you wait for someone to pick you up and transport you to a terminal for rest and nourishment.

UTU welcomes public debate and Congressional scrutiny on these important matters. It is obvious to us that if the fatigue issue is going to be resolved in the rail industry, Congress must be involved. FRA does not currently have the authority to take the significant actions required to solve this problem.

The only surprise in all of this debate is the fact that human factor accidents and train collisions are not increasing at an even faster rate. The professionalism of our veteran operating crews is the only reason we do not have a daily high profile collision somewhere in this country. The Hours of Service Act was intended to improve safety in our industry by managing the amount of time a safety sensitive employee could work. Congress never intended for this legal subversion to move the allowable service time to anything the railroads find to be convenient.

UTU has entered into many 'work-rest' agreements with the railroads in the past several years to address human fatigue and operational safety issues. An overwhelming majority of those projects were canceled by the railroads in a short period of time because guaranteed time off reduces the number of hours an employee must be available for duty each week, month, and year. The railroads recognized that they need additional employees to cover assignments if the employees have regular and predicable time off each week.

To credit FRA, a Collision Analysis Working Group (CAWG) was created to analyze 65 main track train collisions, identify commonalities, and recommend changes to prevent future collisions. Rail management, the UTU, the Brotherhood of Locomotive Engineers and Trainmen (BLET), and the FRA were all equal partners in this exercise. This analysis obviously showed a direct link to fatigue as a contributing factor in many of these collisions and the corresponding loss of situational awareness by the crews. The industry participated in the analysis as an equal partner.

The industry also participated in drafting and approved the final language contained in the report as an equal partner, and afterwards

demanded that their officers' names be stricken from the final report when senior management learned the involvement of fatigue was mentioned in connection with these collisions. I am thankful that FRA had the courage to publish this significant work after removing the railroad officers' names.

UTU referred to this CAWG group in earlier testimony and realized that a copy of this report has not been furnished to this committee or your staff. We are furnishing the committee with copies of this report today for your ready reference. UTU thinks this document forms a foundation for necessary Congressional action to resolve fatigue as a major safety issue. We are making printed copies of this document available today for your staff and the committee.

We are also submitting as an appendix to our testimony NTSB Safety Report NTSB/SR-99/01 entitled Evaluation of U. S. Department of Transportation Efforts in the 1990's to Address Operator Fatigue. We think this report also has a significant contribution on fatigue for your consideration. This is one of many NTSB recommendations in the past 18 years on operator fatigue.

UTU has now testified on multiple occasions that we know that Congressional intervention is required to resolve fatigue in the rail industry.

Our recommendations to the Transportation and Infrastructure Committee are:

- Amend the Hours of Service Act to permit only 10 Hours of Service for each tour of duty for covered employees
 - o This means that the time an employee reports for service and is then released at the final terminal will not exceed 10 hours.
- Establish a reasonable cumulative total for permitted service each 7 days.
- Require a minimum of 12 hours notice for employees reporting for service on call that do not have a regular starting time.
- Provide FRA additional resources to enforce these safety parameters.
- Provide FRA the authority to further restrict the total time on duty when sensitive operations are involved and the safety of the operation requires.

Good Faith Challenge and Employee Responsibility

The railroad companies formal stated position in more than one FRA sponsored working group is that a railroad supervisor has the legal authority to instruct employees under his supervision to violate Federal Law, Federal Regulations, and even the company's own operating rules. Obviously many times these confrontations result in charges of insubordination and dismissal for the employees involved with these safety discussions when they do not follow the instructions out of concern for their own safety.

The railroad also stated that the only recourse an employee should have when instructions are received that will endanger the life of the employee is to file a grievance under 49 U.S.C. 20109. More troubling than that ridiculous position is the AAR position that 20109 also prohibits FRA from taking any action to establish a Good Faith Challenge provision in other sections of the Federal Regulations.

One section of the Federal Regulations (CFR Part 214.313(d) and 214.311(b)) contains a Good Faith challenge provision that outlines the procedure to be followed when an employee expresses a concern that instructions received from his supervisor will endanger his safety and violate company rules and Federal Regulations. This provision in Part 214 has proven to be very effective in making safety the top priority under this section of operations for roadway workers.

Strict compliance and proper application of operating rules, special instructions, and Federal regulations are key components of any rail safety program. Rules and regulations apply to all railroad employees, including the mid level managers and all railroad supervisors.

Our lawyers support the FRA position on the Good Faith Challenge. We hope this issue will be resolved in the near future by consensus with all parties participating. If there is further legal challenge based on 20109 and an employees right to comply with rules and federal regulations, we will be back to ask this Committee to clarify FRA's authority on this issue.

We will try to offer an informed response to any questions. We appreciate the opportunity to appear before the Committee today.

Attachments:

FRA Collision Analysis Working Group (CAWG) February 21, 2006 Final Report

NTSB Safety Report NTSB/SR-99/01 entitled Evaluation of U. S. Department of Transportation Efforts in the 1990's to Address Operator Fatigue